IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 39 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH TAX

Versus

PRASHANT JIVANLAL KINARIWALA

Appearance:

MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The following question has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Ahmedabad Bench "C". The assessment year is 1979-80 and the relevant valuation date is 31/12/1978 :

"Whether, the assessee had in law validly transferred 40% of the share of the Profit from out of his 15% share, right, title and interest in the profit and 19% in the losses of the partnership frim M/s.Ramniklal Jivanlal and Co. In favour of Prashant J.Kinariwala Family Trust and as a result thereof the amount of Rs.2,08,889/- cannot be included in the net wealth of the assessee ?"

2 We have heard Mrs.M.R.Bhatt for the applicant-revenue. None appears for the respondent though served.

3 During the accounting period relevant to the assessment year, the Income Tax Officer had treated creation of a family trust by the assessee and consequential transfer of 40% share of the profits and loss from the firm as invalid and brought to tax the income in hands of the assessee. As a consequence in the wealth tax proceedings it was held by the Wealth Tax Officer that, the interest in capital which was transferred yet belongs to the assessee and was includible in the net wealth of the assessee. Both the appellate authorities, viz. Appellate Assistant Commissioner and the Tribunal deleted the addition in question following their view taken in income tax proceedings.

4 The issue is now settled by a decision of this Court in case of Sunil J.Kinariwala vs. C.I.T., 211 I.T.R.127, in which it has been held that as the assessee had divested himself of the income producing apparatus or asset by an overriding title created in favour of the beneficiaries of the trust the income arising from such assets did not become liable to tax in hands of the assessee. In view of the clear finding recorded in the aforesaid decision, once the income producing apparatus or asset stood transferred by overriding title created in favour of the beneficiaries of the Trust, there was no reason to hold that the said interest which was

transferred would be wealth assessable in the hands of the assessee. The Tribunal was therefore right in holding that amount of Rs.2,08,889/- could not be included in the net wealth of the assessee. The question referred to us is therefore answered in the affirmative i.e. in favour of the assessee and against the revenue.

5 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah, J) (D.A.Mehta,J)

m.m.bhatt